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IN THE MATTER OF THE ONTARIO HUMAN RIGHTS CODE,
R.S.O. 1970 c. 318, as amended

IN THE MATTER OF: The complaint, as amended, of Mrs. Margaret Ofori of Toronto, Ontario, alleging discrimination in employment by the Cara Operations Limited, CN Tower, 55 York Street, Toronto, Ontario, contrary to paragraph 4(1)(b) of the Ontario Human Rights Code, R.S.O. 1970, c. 318, as amended.

BOARD OF INQUIRY

Professor Frederick H. Zemans

Appearances

Ms. Janet Minor	Ministry of the Attorney-General, Counsel for the Ontario Human Rights Commission
Mr. D. Churchill-Smith,Q.C. Mr. M. J. Adario	Counsel for Cara Operations Limited

123 - Douglas (80-1)
124 - ~~Nat Gen Fillers~~ (80-1)
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125 - Nat Gen Fillers (80-1)
127 - CNA (80-1)
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DECISION

1. Appointment

On April 15, 1980, I was appointed by the Honourable Robert Elgie, Minister of Labour, as a Board of Inquiry under the Ontario Human Rights Code to hear and decide the complaint of Ms. Margaret Ofori of Toronto, Ontario, alleging discrimination in employment by Cara Operations Limited, CN Tower, 55 York Street, Toronto, Ontario.

On August 12th and 13th, 1980, a hearing was held in the City of Toronto, at the County Court House, 361 University Avenue. Ms. Janet Minor appeared as counsel for the Ontario Human Rights Commission and Messrs. D. Churchill-Smith, Q.C. and M. J. Adario appeared as counsel for Cara Operations Limited.

2. The Complaint

On July 23, 1979, Ms. Margaret Ofori attended at the offices of the Ontario Human Rights Commission at 400 University Avenue in Toronto, and there filed a complaint alleging discrimination in employment because of her nationality, ancestry and place of origin against Cara Operations Limited, its servants and agents, at the CN Tower, 55 York Street, Toronto. This complaint alleges a violation of s.4(1)(b) of the Ontario Human Rights Code and was introduced and filed as an exhibit at the Board of Inquiry.

The Ontario Human Rights Code, s.4(1)(b) provides:

"4.(1) No person shall,

(b) dismiss or refuse to employ or to continue to employ any person; because of race, creed, colour, age, sex, marital status, nationality, ancestry, or place of origin of such person or employee."

An amended complaint against the same respondent was signed by the complainant on March 24, 1980 alleging discrimination in employment on the additional grounds of race and colour. The amended complaint was introduced and filed as an exhibit at the Board of Inquiry. Counsel agreed

that paragraph one of the particulars of discrimination in the complaint of March 24, 1980 should be amended to read March 1977 rather than 1976, and that paragraph two should be amended from Tuesday, July 9th to Tuesday, July 10th and Wednesday, July 10th to Wednesday, July 11th, 1979.

It is necessary at the outset to make several observations:

(1) Although the complaint dealt with the termination of employment of Ms. Ofori, it was necessary for the Board of Inquiry to consider the relationship of the complainant to Cara Operations and its employees during the two year period that she worked full-time and part-time for Cara Operations at the CN Tower. Although it was open to me under the Statutory Power Procedure Act, S.O. 1971, chapter 47, to have ruled inadmissable all evidence other than that directly relating to the issue set forth in the complaint, that is in relation to termination of employment, I chose not to do so to enable the Board to have a complete picture of the situation that existed at the CN Tower from the time that Ms. Ofori commenced work until her employment was terminated. It is my opinion that such a full hearing was necessary for the Board to ascertain whether the ultimate termination did contravene the Ontario Human Rights Code and that such a full hearing was in keeping with the general practice of Boards of Inquiry established in similar circumstances.

(2) Another reason for allowing a full hearing of all the evidence with respect both to the relationship of the complaint and Cara Operations and to the employment practices of Cara Operations is the difficulty of the determination that this Board has to make. The responsibility of an inquiry board investigating discrimination has been discussed by Professor Stephen Borins as he then was in Linda Kennedy v. Mohawk College where he stated:

> "Discrimination on the grounds of race or colour is frequently practised in a very subtle manner. Overt discrimination on these grounds is not present in every discriminatory situation or occurrence. In a case where direct evidence of discrimination is absent, it becomes necessary for the Board to infer discrimination

> from the conduct of the individual or individuals whose conduct is in issue. This is not always an easy task to carry out.
>
> "The conduct alleged to be discriminatory must be carefully analyzed and scrutinized in the context of the situation in which it arises. In my view, such conduct to be found discriminatory must be consistent with the allegation of discrimination and inconsistent with any other rational explanation. This, of course, places an onus on the person or persons whose conduct is complained of as discriminatory to explain the nature and purpose of such conduct. It should also be added that the Board must view the conduct complained of in an objective manner and not from the subjective viewpoint of the person alleging discrimination whose interpretation of impugned conduct may well be distorted because of innate personality characteristics, such as a high degree of sensitivity or defensiveness."

3. The Facts

The complainant is a 28 year old, married woman with one child. She was born in Ghana, West Africa. She moved to West Germany in 1972, where she lived for 4-1/2 years, until moving to Canada in 1976. Ms. Ofori presently lives in Toronto.

There were discrepancies between Ms. Ofori's testimony at the hearing and the form which she completed when she applied to Cara Operations for employment in regard to her previous employment. Since nothing turns on these discrepancies, in my opinion, I do not make any finding of fact as to the complainant's previous employment.

Cara Operations Limited is a multi-divisional company operating essentially in the food and beverage industry from coast to coast and employing

over 8,000 employees. Cara Operations operates four divisions: the airline services division; the air terminal restaurants division; the urban restaurants division; and the retail stores division. The retail stores division is responsible for the operation of the retail stores, including those at the CN Tower. Mr. Dennis Cook testified that Cara Operations has "virtually every race, nationality, religion, person of any kind of ethnic origin working for the company" (Evidence 289) and that the company made available employment opportunities for Vietnamese refugees in 1979.

Ms. Ofori's employment with Cara Operations began in March, 1977 at the CN Tower location when she was hired by the then manager Ms. Cathy Summers as a full time cashier. Ms. Ofori indicated that she believed that she was liked by Ms. Summers and that they got on well. Ms. Anna Margarita Edstrom became manager of the retail sales division of Cara Operations at the CN Tower in October, 1978.

In September, 1978 Ms. Ofori enrolled in courses at Humber College, Toronto, in an effort to up-grade her education. She continued her employment with Cara Operations, but as a result of her enrollment at Humber College she became a part-time employee working, on the average, about 20 hours per week. She usually worked the evening shift, beginning at 4:00 p.m. and finishing at 11:00 p.m.

Ms. Ofori would begin a typical day at the CN Tower by checking her schedule to ascertain at which of the several locations she would be working. Cara Operations maintained a policy of rotating the location of employees among their various shops and cash registers in the CN Tower. Once Ms. Ofori knew her location, she would present herself there and relieve the previous cashier. She usually began her shift at 4:00 p.m. or slightly later when she was delayed at Humber College. Her supervisor accepted the fact that she would periodically be late arriving from school and would arrange for another cashier to work until Ms. Ofori arrived. Ms. Ofori wore a Cara uniform consisting of a jacket with two pockets and matching pants while working at the CN Tower.

According to Ms. Ofori, her problems began when Ms. Edstrom was appointed as manager of the CN Tower. Ms. Ofori related an incident

in which Ms. Edstrom is alleged to have said that she did not think she could work with her, although they, in fact, worked together from the fall of 1978 until July of 1979. Ms. Ofori felt that Ms. Edstrom disliked her because she was a black African. That is indicated in the following testimony at page 17.

Question:

"Did you feel that she disliked you?"

Answer:

"Yes, she disliked me."

Q.

"Did you tell her where you were born?"

A.

"Yes, because one day her husband came there and they asked me and I told him that I lived in Germany, that I am an African from Ghana."

Ms. Edstrom testified that she recalled a conversation with Ms. Ofori about the latter's nationality. According to Ms. Edstrom, the incident occurred on a Saturday or Sunday when Ms. Ofori mentioned that she had lived in Germany and continued on to say she was not born in Germany, but in Ghana. Ms. Edstrom says Ms. Ofori volunteered this information to her and her husband. Ms. Edstrom testified that she perceived Ms. Ofori as a person who was very proud of her national origin who wished to indicate that she was of black African origin. She asserted her ethnic origin in numerous situations with other employees and was the source of some tension in her relations with other employees. Other employees testified to Ms. Ofori's alleged sensitivity to her colour and nationality.

Ms. Theresa McGlenning, a 22 year old, part-time cashier, testified that there had been one occasion during her two year employment at the CN Tower when Ms. Ofori had offended her. The witness alleged that Ms. Ofori had claimed she was a better black person as she was a pure black from Africa and not an offspring of slavery like black Canadians and

Americans. Another employee, Ms. Judy Cumberbatch, testified to a similar experience with Ms. Ofori. Ms. Ofori allegedly criticized, in Ms. Cumberbatch's presence, black persons who straighten their hair saying that such a practice is an attempt by blacks to become part of the white society. The remark offended the witness as she is a black person who straightens her hair on occasion. Ms. Cumberbatch testified that Ms. Ofori frequently spoke of her nationality or her place of origin.

Ms. Edstrom also testified about an incident that involved Ms. Ofori and another employee. Ms. Edstrom testified that in April, 1979, Ms. Ofori telephoned another employee and accused the employee of being a racist and of trying to get Ms. Ofori into trouble because she is black. Ms. Edstrom testified that she met with Ms. Ofori on April 11, 1979 to discuss this incident and to assure Ms. Ofori that she felt that her concerns about her job and about racism were ungrounded. Ms. Edstrom alleged that at this meeting Ms. Ofori indicated a concern that many of the employees at the CN Tower were racist. Ms. Edstrom's evidence was that she requested Ms. Ofori to report any specific incidents that might arise where she believed that she was being treated differently because of her race or colour.

Ms. Penny Goldrick who investigated the complaint for the Commission also testified that a number of Ms. Ofori's fellow employees had informed her that Ms. Ofori felt that, as a black African, she was superior to blacks from Canada or the West Indies. (Evidence 90)

The incident that gave rise to the complaint herein arose on July 9, 1979. On that day, Ms. Ofori had been at school and she arrived for work at about 5:00 p.m., which was approximately one hour late. However, her supervisors did not disapprove as they were aware that she would occasionally be tardy when coming from school. When Ms. Ofori arrived at the cash register she was to operate that evening, she relieved another employee (Bill Kinaschuk) who had been awaiting her arrival. Mr. Kinaschuk had been on the cash register for about one hour and the evidence indicates there had been no sales while he was there. Ms. Ofori did not count the float when she relieved Mr. Kinaschuk.

Each cash register had a cash float of $100 and when another employee commenced a shift the money was counted to ensure that the starting employee was left with the $100 float and that the remaining money in the cash register balanced with the total sales. At the end of each shift the money in the cash register was taken to a supervisor to be counted and checked against total sales and the float money. If all was in order, the supervisor then deposited the money.

The evidence before me was that there was nothing abnormal in the operation of business at the CN Tower on July 9, 1979. At about 7:00 p.m. one of the supervisors, Mike Hoffeldt, did a spot check of all the cashiers. He found that Ms. Ofori was over $7.61. Margaret Ofori finished her shift at 11:00 p.m. and removed the money from the cash register and gave it to Mr. Hoffeldt. After counting it, he informed her that her cash was $10.53 short. Mr. Hoffeldt was surprised at the fluctuation between his 7 o'clock balance and the final tally of Ms. Ofori's cash. He double-checked his figures to ensure that he had not missed an item.

Mr. Hoffeldt testified that while he may have made a mistake in his first float count of Ms. Ofori on July 9, 1979, it would be unlikely. He admitted that he could have made a mistake in his audit at the end of the shift, but doubts very much that that occurred. He also gave evidence that it is possible that there was an error in the float books since it is used merely as a guide and is not absolutely accurate. Mr. Hoffeldt also felt that it was possible that the money could have been dropped when, for example, the float was being counted. He also related one incident where an employee had found $10 around or under the cash register. After checking and rechecking this employee's float sheet it was discovered that there was a discrepancy between what he had written down on his float sheet and what should have been on his float sheet. This incident was never reported to Ms. Edstrom. When Mr. Hoffeldt was asked why it was not reported, he said it was a completely different case than that of Ms. Ofori.

Ms. Ofori testified that after her cash was checked she recalled that she had forgotten her two float sheets upstairs under the

cash register. She asked another employee (Tae Hwang) to retrieve these sheets for her. Ms. Ofori did not return to her cash register on July 9, 1979. This evidence was confirmed by Mr. Hoffeldt who testified that another employee went upstairs to get something which Ms. Ofori had forgotten.

On the morning of July 10, 1979 Ms. Edstrom was informed by Mr. Hoffeldt that Margaret Ofori had been $7.61 over at 7:00 p.m. and that at the end of the shift she was $10.53 short. Shortly thereafter, at about 10:00 a.m., another Cara Operations employee at the CN Tower, Gloria Jenkins, attended at Ms. Edstrom's office and showed her two $10 bills that she had just found under her cash register while cleaning out the boxes and bags. She testified that on July 10, 1979 she commenced working at 10:00 a.m. at the cash register to which she was assigned. Ms. Jenkins proceeded to take all the tissue paper and other wrapping paper from underneath the cash register. As she removed some of the bags two $10 bills fell to the floor. She immediately informed Mr. Hoffeldt of the twenty dollars that she had found. She subsequently spoke to Ms. Edstrom. Mr. Hoffeldt testified that the two $10 bills were found in the area under the cash register, but he did not know exactly where. He stated that it was possible that no one would check or clean the area below the cash register for a few days. Once a store was closed no one was permitted into that area until the next shift began the next morning.

Ms. Edstrom testified that she soon discovered that the cash register where the twenty dollars was found was the same location where Ms. Ofori had been working the previous night. She immediately commenced an investigation to determine the origin of the twenty dollars. She testified that she ascertained there had been no cash or float problems on July 9, 1979 and that Bill Kinaschuk had not operated the cash register prior to Ms. Ofori's arrival. She interviewed Tae Hwang, who had been operating the second cash register in the same store during the night shift of July 9, 1979, and concluded that Mr. Hwang had not used the cash register for which Ms. Ofori was responsible.

Ms. Edstrom testified that her investigation led her to believe that there was a connection between the two $10 bills found on the morning

of July 10th and Ms. Ofori's shortage of approximately $18 on the evening of July 9, 1979. Ms. Edstrom contacted her supervisor, Ms. Herlihy, to discuss the matter. It was their joint decision that unless Ms. Ofori could present an acceptable explanation of the coincidence between the shortage and the found money that she should be dismissed from her employment.

On the morning of July 10, 1979 Ms. Ofori received a telephone call from Ms. Edstrom asking Ms. Ofori to meet with her as soon as possible at her office. Ms. Ofori could not attend that day because she could not get a babysitter and she agreed to meet Ms. Edstrom the following morning.

On July 11, 1979 Ms. Ofori arrived at Ms. Edstrom's office around noon hour. The parties differ as to the content of this crucial discussion and unfortunately there were no witnesses to the conversation as the door to Ms. Edstrom's office was closed. Ms. Ofori testified that she was dismissed because of the two $10 bills that had been found under the cash register she had operated and Ms. Edstrom's belief that she had attempted to steal this money from the company. Ms. Ofori testified that she had asked why she was being accused of this attempted theft and that she had indicated that she had not operated her cash register alone and that several other employees had been in the same area during the evening in question. At the hearing, Mr. Hoffeldt confirmed that the cash register Ms. Ofori was operating on July 9, 1979 was about twenty feet away from another cash register operated by Tae Hwang. When Ms. Ofori went for her coffee break it was possible that Mr. Hwang could have operated Ms. Ofori's cash register. If an employee operates another employee's cash register he or she is instructed to draw a line on the "detail roll" in that register and indicate that he or she had operated the machine. In Ms. Ofori's case, Mr. Hoffeldt did not check the roll or tape on Ms. Ofori's cash register. Rather, Mr. Hoffeldt was informed that no one else had used Ms. Ofori's cash register. Ms. Ofori testified that in response to her questioning Ms. Edstrom stated: "No, they can't do that, it's only Africans who can steal." (Evidence 25) Ms. Ofori alleges that she started crying because she was very upset and left Ms. Edstrom's office to go to the head office of Cara Operations where she alleges that she was informed

that Ms. Edstrom would be spoken to about the problem. July 9, 1979 was the last day that Ms. Ofori was employed by Cara Operations. Shortly thereafter she filed a complaint with the Ontario Human Rights Commission.

Ms. Edstrom's version of the final meeting between herself and Ms. Ofori differs considerably from that of the complainant. She testified that she pointed out to Ms. Ofori her $7 overage and $10 shortage and asked Ms. Ofori for an explanation. Ms. Edstrom stated that she did not receive an explanation and that she then told Ms. Ofori about the finding of the two $10 bills underneath the cash register that she had been operating. Ms. Edstrom stated that she again did not receive any explanation from Ms. Ofori (Evidence 157). Ms. Edstrom's testimony, according to her notes that she made shortly after this meeting, was that Ms. Ofori was calm and that she accused other employees of stealing but that she did not give any specific incidents.

Ms. Edstrom testified that as she did not receive any adequate explanation, she dismissed Ms. Ofori from her employment with Cara Operations. Ms. Edstrom stated that Ms. Ofori reacted calmly to her dismissal and that she left the office, removed her uniform and gave her address where her final pay cheque could be mailed. Ms. Edstrom specifically denied that during the final interview she said that only Africans steal. (Evidence 159) She also specifically denied that she ever said anything to Ms. Ofori about her race or nationality from October, 1978 to July, 1979. (Evidence 159)

Mr. Dennis Cook, Employment Administrator in the Employee Relations Department of Cara Operations Limited, stated that he was informed that Ms. Ofori had attended at the head office of Cara Operations in Toronto on the day that she was terminated and had been very upset and crying. Mr. Cook had been away on the date of her termination and did not participate in the decision made by Ms. Herlihy and Ms. Edstrom to terminate Ms. Ofori. Mr. Cook contacted Ms. Ofori by telephone shortly after her termination and discussed her concerns about her firing with her. He states that he asked Ms. Ofori if Ms. Edstrom had done or said anything to indicate that she didn't like Ms. Ofori. Mr. Cook testified that his notes indicate

that Ms. Ofori stated that Ms. Edstrom was nice to her although some of the employees at the CN Tower complained that Ms. Edstrom screamed at them (Evidence 334). Mr. Cook also testified that his notes of his conversation with Ms. Ofori indicate that Ms. Ofori said to him that "I'm a very, very nice person and I don't understand why she fired me for one (1) mistake." (Evidence 334) Mr. Cook stated on cross-examination that while he might have personally handled the situation with Ms. Ofori differently than it had been handled by Ms. Edstrom and Ms. Herlihy, he had no doubt that Ms. Ofori was terminated because of cash mishandling.

Ms. Penny Goldrick investigated Ms. Ofori's complaint on behalf of the Ontario Human Rights Commission. Ms. Goldrick conducted what she indicated was a regular investigation pursuant to the provisions of s.14 of the Ontario Human Rights Code.

In the course of this investigation she interviewed Ms. Ofori, Ms. Edstrom and various other employees of the respondent, Cara Operations. At the interview with Ms. Edstrom and Dennis Cook, Ms. Goldrick was told by Ms. Edstrom that Ms. Ofori had been asked to explain the two $10 bills under her cash register and the cash discrepancy. When Ms. Ofori did not offer any explanation she was told by Ms. Edstrom that her employment was terminated. Ms. Edstrom denied making any reference to the fact that Ms. Ofori was African. This was consistent with her testimony at the hearing. Ms. Goldrick noted during the investigation that although other blacks were employed by the company none of them were black Africans. She also had occasion to examine the company's record of cash discrepancies which revealed that it was not unusual for cashier to be over or under at the end of their shift for a variety of reasons, including the fluctuating rate on the American dollar and the failure to ring in sales on occasion; however, Ms. Edstrom had never terminated any other employee while she was the manager of Cara Operations at the CN Tower. Mr. Hoffeldt, in his testimony at the hearing, cited several instances from the "Blue Book" (Exhibit 4) where other employees were short up to $25 during 1979. The employees responsible for some of the shortages would be spoken to, but no employees were dismissed as a result of the shortages in 1979.

Dennis Cook informed Ms. Goldrick that Ms. Edstrom and Ms. Herlihy believed that they were dealing with a case of theft or of possible theft, but that they had never directly accused Ms. Ofori of theft.

Ms. Goldrick learned that there had been some minor and unrelated problems with Ms. Ofori's employment in respect of her ability to get along with some of the other employees. Ms. Edstrom had indicated to Ms. Goldrick that she considered Ms. Ofori to be good with customers and that generally her performance on the job was fine. Ms. Edstrom was emphatic in her discussion with Ms. Goldrick that Ms. Ofori's termination occurred solely because the two $10 bills had been found under Ms. Ofori's cash register the morning after she had been short about $18, and because she could not offer any explanation with respect to these events. Ms. Edstrom indicated that Ms. Ofori's dismissal was not based on any incidents previous to July 9, 1979.

Ms. Goldrick testified that she interviewed eleven other persons connected with the incident at the CN Tower in July, 1979. Most of these persons were fellow employees of Ms. Ofori. These fellow employees stated that they had no reason to believe that Ms. Ofori would steal. Many of those interviewed told Ms. Goldrick that there were other cashiers whom they might suspect but that they perceived Ms. Ofori to be an honest person.

Ms. Goldrick further testified that those individuals she interviewed did not feel that Ms. Ofori had been dismissed because of discrimination nor did they believe that Ms. Edstrom would have made a remark that "only Africans steal" (Evidence 86-7).

Summary of Facts and Conclusion

There is some doubt in my mind as to whether Ms. Ofori was properly dismissed from her employment with Cara Operations Limited at the CN Tower. The evidence does not satisfy me that Ms. Ofori was attempting to steal $20 from her employer of more than two years. There were undoubtedly many easier opportunities for Ms. Ofori to have taken a relatively small amount of money. She could have hidden the money on per person or in the pockets of her uniform on the night of July 9, 1979. It is significant in this regard that she did not return herself to the area where her cash register was located but instead requested another employee to pick up her float sheets. There is the possibility that some other employee may have accidentally or intentionally put the $20 beneath the cash register where Ms. Ofori worked her last shift. All of these items might be relevant if we were here concerned with a civil action for wrongful dismissal. But in these proceedings we are concerned only with conduct contrary to the Ontario Human Rights Code. For the purpose of allegations under the Code there seem to be three relevant aspects to the case.

First, there is Ms. Ofori's allegation that Ms. Edstrom said that she did not think she could work with her. This statement is denied by Ms. Edstrom and it is not corroborated. As well, there is the evidence of Ms. Ofori that she was asked by Ms. Edstrom and her husband where she came from. Such questioning is denied by Ms. Edstrom and Ms. Ofori on cross-examination acknowledged that she told the Edstroms that she was not born in Germany but rather in Africa. I find that I cannot accept that this incident indicated that Ms. Edstrom was prejudiced against Africans.

I cannot attribute any discrimination to Ms. Edstrom or to Cara Operations Limited on the basis of these alleged incidents. I rather find that they confirm the respondent's position that Ms. Ofori was a person who was highly sensitive, particularly with respect to colour, nationality and place of origin.

Secondly, there was evidence given with respect to several incidents involving Ms. Ofori in confrontations or discussions with other employees about their racial attitudes and personal demeanor. One incident was described by Ms. Edstrom in hearsay evidence. But ignoring the situation related by Ms. Edstrom, I do accept the evidence of Theresa McGlenning and Judy Cumberbatch that Ms. Ofori had involved them in discussions which might be characterized as "black consciousness raising" in which she was critical of blacks from the western hemisphere who had adopted a western life style and in the process had failed, in her opinion, to retain their African heritage. These witnesses confirm that Ms. Ofori was an honest worker while employed at the CN Tower, but one whose strong concern with the retention of her national and racial identity intruded upon her relationships with her fellow employees.

Thirdly, there are the facts surrounding the firing of Ms. Ofori by Cara Operations Limited. The only specific evidence led to show discrimination is the allegation that Ms. Edstrom told Ms. Ofori that only Africans steal, at the time that she dismissed her. This statement is denied by Ms. Edstrom and is not corroborated by any other witnesses. No evidence was called by the Human Rights Commission to indicate that this remark was repeated to any other individuals by Ms. Ofori. I accept the evidence of Dennis Cook and find him to be a highly credible and forthright witness. He testified that he made notes of a telephone call with Ms. Ofori shortly after her dismissal in which she made no mention of this alleged remark. On the contrary, she stated that she had had no problems with Ms. Edstrom. I find Mr. Cook to have been very frank in his testimony to the tribunal and when in conflict with Ms. Ofori, I accept hsi recollection of the events of July, 1979.

I have little doubt that Ms. Ofori was terribly shocked and hurt by her dismissal by Cara Operations. I also have little doubt that she honestly perceived her dismissal to be on the basis of her race and nationality. It is not in my power to determine whether she was wrongfully dismissed but I must add that I do feel that Ms. Edstrom and Ms. Herlihy, although acting in what they considered to be the company's best

interests, were rather harsh in their treatment of Ms. Ofori. I am dismayed that an employee of some two years standing would be dismissed on the basis of one incident, that is, Ms. Ofori's inability to explain the coincidence of Ms. Ofori's shortage of approximately $18 and the finding of $20 near her cash register. If this tribunal had the jurisdiction to order reinstatement of Ms. Ofori, I would have seriously considered doing so as I believe that the evidence is not conclusive either that Ms. Ofori stole or attempted to steal from the respondent. I would have thought that in light of Ms. Ofori's good work record that this incident warranted a reprimand and a warning rather than dismissal.

Despite my reservations about the legitimacy of the firing of Ms. Ofori and my acceptance that Ms. Ofori believed her dismissal was related to her nationality and race, I cannot find that the respondents have contravened the Human Rights Code.

The leading case on this subject is Regina v. Bushnell Communications Ltd., et al (1974) 4 O.R. (2d) 288. In that case the accused corporation was charged under s.110(3) of the Canada Labour Code, R.S.C. 1970, c. L-1, making it an offence to "refuse ... to continue to employ any person ... because the person is a member of a trade union". There was evidence of acrimony and disagreement among a number of employees and especially with the subsequently dismissed sports broadcaster, whose dismissal led to the charge being laid. Indeed it would not have been surprising had the company decided to dismiss him at some point. However, the day before the dismissal, a letter was delivered by a union representative to the executive vice-president of the company, advising him that the employee was a member of the union. In other words, the notification of union membership was followed the next day by dismissal. The court of appeal, in upholding the conviction of the employer stated (at p. 290), "... union membership must be a proximate cause for dismissal, but it may be present with other proximate causes." [Underlining, mine.] I construe these words to mean that union membership must have played a material role, though not the sole or even dominant role in the decision to dismiss. Given the sequence of events in the Bushnell case it is not all surprising that union membership was so viewed by the court.

Another way of stating the test might be to ask, "Would the employee have been dismissed at that time, had the impugned proximate cause not been present?" In the Bushnell case, it is hard to imagine the dismissal occurring just by coincidence the day after notice was received of the employee's membership in the union.

The equivalent questions asked in the present case would be, "Was Ms. Ofori's race or colour a proximate cause in her dismissal?", and "Would Ms. Ofori have been dismissed at that time had she been a white employee?". In my view, the answer to the first question is "No", that Ms. Ofori's colour and nationality were not a proximate cause. She was dismissed because the particular management personnel believed that her lack of explanation confirmed their suspicions that she had attempted to steal $20 on the evening when there was a fluctuation in her cash amounting to approximately an $18 shortage. Although Ms. Ofori perhaps rationalized the incident as one involving discrimination there is in my opinion no basis for attributing to Cara Operations Limited that discrimination was a proximate cause of Ms. Ofori's dismissal. It follows that in all likelihood Ms. Ofori would have been dismissed if she had been a white person in the same circumstances and on the same occasion. I do not believe that Ms. Ofori's being a black African played any role in the decision by the employees of Cara Operations to dismiss her.

Accordingly, I do not find that Cara Operations Limited violated s.4(b) of the Ontario Human Rights Code in dismissing Ms. Margaret Ofori.

For the reasons set out above, the complaint is dismissed.

Dated at Toronto, Ontario
March 26, 1981

Frederick H. Zemans, Chairman
Board of Inquiry